

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF NORTH LIBERTY, IOWA

It is the opinion of the City of North Liberty, Iowa, that local governments are the best-equipped entities to ensure and oversee provision of video services to their residential constituents. Local franchises serve many purposes, including addressing the needs of consumers specific to a market or geographic area. These comments will illustrate how a competitive video franchise was recently granted in North Liberty in a timely manner, and how our local government facilitated entry into the video services field by a new provider, without undermining the interests of our established cable operator. What follows will also serve to illustrate how North Liberty utilizes franchise and associated fees in the interest of all members of the public.

Cable Franchises in North Liberty

North Liberty is a city with a population of over 7,200. Our franchised cable providers are South Slope Cooperative Communications Company and Mediacom Communications Corporation (referred to below as “South Slope” and “Mediacom”, respectively). Our community has successfully negotiated cable franchises since 1982. Combining both cable operators, there is a cable subscriber penetration rate of approximately 61.5%, with Mediacom carrying about 85 percent of the subscriber base.¹

Our current franchise with Mediacom was granted in 1998 and will expire in 2013 (15 year term). South Slope’s Franchise began in 2004 and will end in 2014. Although the terms differ by five years in length, North Liberty was careful to negotiate “reasonably comparable” agreements (as provided for in the existing Mediacom agreement at the time of South Slope’s entrance into the market).² The terms of the agreement are technology-neutral, making it easier to grant similar franchises to multiple providers. Similar agreements help consumers know what to expect from each vendor and streamline compliance oversight for the LFA and the service providers.

Mediacom and South Slope carry state and local Emergency Alert System (EAS) alerts. The City of North Liberty also has access to the EAS on both cable systems, and follows Federal EAS guidelines in the utilization of the EAS.

¹ Penetration rate based on third calendar quarter 2005 PEG fee reports from cable operators measured against residential water bill accounts (as number of total households).

² Franchise Agreement between The City of North Liberty, Iowa, A Municipal Corporation, and Galaxy Telecom, L.P., A Delaware Limited Partnership [transferred in 2001 to Mediacom, henceforth the “Mediacom Franchise”] Section V.

Franchise Fees and PEG Usage in North Liberty

Both cable operators pay a franchise fee to the City in the amount of 5% of their gross revenues, in accordance with the Federal Cable Act.

Capacity for public, educational, and/or governmental ("PEG") access channels on the cable system is required. We currently have one combined PEG channel, with franchise requirements for additional channels (if need is demonstrated, based on the amount of non-duplicated original programming).³

Our franchise agreements provide for two forms of PEG capital support: matching grants and a subscriber-based ongoing fee. Mediacom provided \$15,000 in matching funds (the City was required to spend equal to or greater the grant amount each year on capital PEG expenditures from non-grant funding sources), paid out as \$3,000 per year over five years. South Slope offered \$20,000 in matching grants, paid at \$2,000 per year over 10 years. Both operators also collect a \$.50 per subscriber per month fee which supports PEG access facilities.

Both franchises protect existing PEG local origination points and require optical transmission equipment for PEG channels if the cable system utilizes such equipment. The South Slope franchise allows for additional local origination points to be added at the city's request, at South Slope's expense.

Like many LFAs, North Liberty uses the franchise fees collected from use of the public rights-of-way to support PEG access. Nearly seventy percent of the North Liberty Telecommunications Department's budget is from franchise and PEG support fees collected by the cable operators. This department provides timely and critical local information to our residents, using more than just the PEG channel. Content developed for PEG access is relayed into different formats: the information from a City Council meeting is available on the cable access channel, but it also appears in various forms on the City of North Liberty website and is available at our community library on DVD. We produce DVDs of all our local programming, available for viewing or checkout to any member of the public, not just cable subscribers. We also share programming of regional interest with adjacent communities. While many of these information avenues begin with simple video production, the end result is a well-informed public. Without the funding collected from the current cable franchise mechanism, North Liberty government would have to work much harder to communicate with our residents. We are able to add the relatively small amount on top of franchise fees to disseminate PEG content to other outlets. But, as is presumably the case for many small LFAs, we would not have the funding sources to originate such content in the first place without cable operator support.

Our provider Mediacom has told North Liberty that they value local access, as locally relevant content makes their product more competitive with nationally-distributed DBS packages. Mediacom supports our channel and the operations of the Telecommunications Department, and has on several occasions recommended our PEG station to other communities as a model of superior and efficient access use.⁴

³ Mediacom Franchise Section XI(A); reads as follows: "After the upgrade and upon request of the City, whenever the access channels as set forth in this section show documented proof of performance that they are in use 80% of the cablecast week for any 6 week consecutive timeframe, given at least 12 hours per day, 7 days per week cablecast schedule, with at least 80% (of the time the channel is programmed) unduplicated locally originated programming, the Franchisee shall make up to two additional access channel(s) available as necessary for access use within 6 months of receipt of request by the City. Programming consisting primarily of text messages shall not be included in calculating PEG access use." South Slope's franchise contains the same provision in Section 6.1.

⁴ North Liberty has been recommended to by Mediacom and worked successfully with the communities of Anamosa/Monticello, Coralville, Wellman/Kolona and Carroll, Iowa in establishment and/or expansion of their local access channels.

Customer Service Standards

Local franchising accommodates local conditions. Our franchise with Mediacom requires customer payment drop boxes in two locations in North Liberty. South Slope offers postage-paid billing envelopes (something they provide for their other services as well). Our ability to tailor the franchise to this situation has provided subscribers with this extra convenience.

Both franchise agreements provide for enforcement of FCC customer service standards. We also ask that the operators provide the City with any notices that are sent to customers, and we require that channel change notifications, rate adjustment notices and “customer handbook” information are provided to the City at least 30 days in advance of a change.

While both providers follow Federal standards for new service installations and service calls, South Slope performs 24/7 service repairs, as this is something they provide with their other (telephone and data) services. This standard is included in their franchise agreement.

Service Availability and System Capacity

Both operators that serve North Liberty provide service to all areas within the official City limits. Our franchises include a density provision of 25 homes per plant mile of cable, which currently includes all incorporated areas. As advanced telecommunications services, including video service that utilizes internet protocol transmission, are dependent on adequate bandwidth, and since available bandwidth can be dependent on the distance of a location from primary telecommunications carriage lines, we are concerned with the possibility of geographical discrimination in service offerings. Franchise requirements that state all areas must be served equally prevent providers from choosing where in town they can offer service. In the case of South Slope, who has opted for a fiber-copper hybrid delivery system in North Liberty, this meant that every subscriber could receive data transmission rates sufficient to carry at least one stream of digital video.⁵ While all South Slope customers previously had access to “broadband” internet connections (defined as 200Kbps), the non-discrimination aspects of the franchise, and specifically the minimum bandwidth provision, have resulted in higher bandwidth availability to subscribers, and ensures capacity improvements into the future. This is a good example of a local franchising decision that has directly resulted in furthering the Commission’s goal of more universal broadband availability.

South Slope’s franchise includes a requirement to double their minimum operating capacity within three years of the effective date of the franchise. This of course applies equally to all subscribers in the city. The bandwidth upgrade requirement is completely technology-neutral, which gives the operator the greatest flexibility in responding to and adopting new or varied delivery systems.

Mediacom’s cable system reportedly operates at 1GHz, and was upgraded to this capacity in 2002. Their current franchise states that Mediacom will “operate the system at the same bandwidth capacity as the Franchisee’s cable systems in Coralville, IA and Iowa City,

⁵ South Slope Franchise Section 3.1 states: “The parties understand and agree that the System shall be operated with a minimum bandwidth which is capable of delivering one (1) video stream of high quality commercially available signal, equal to or better than other similar cable TV systems, to each subscriber. The System shall be operated in accordance with performance standards which meet or exceed FCC regulations. Within ninety (90) days of the Effective Date of the Franchise, Franchisee shall establish a minimum operating bandwidth defined to the City in Megabits per second (Mbps) per subscriber (“Minimum Bandwidth”).” South Slope established their minimum bandwidth as 4Mbps per subscriber, which is as much as 15 times faster than their minimum “broadband” designation.

IA...in accordance with performance standards that meet or exceed FCC Regulations.”⁶ This requirement assures North Liberty residents that the cable system here is as up-to-date as that in neighboring communities, and frees Mediacom from following three different rebuild requirements in these adjacent markets.

Violations to the Franchise

In our franchise agreements, there are provisions for the city to collect liquidated damages in cases of material franchise violations. The language on these remedies is as follows:⁷

Violations. For the violation of any of the following, the City shall notify Franchisee in writing of the violation. The City shall provide Franchisee with a detailed written notice of any Franchise violation upon which it proposes to take action, and there shall be a thirty (30) day period within which Franchisee may demonstrate that a violation does not exist or cure an alleged violation or, if the violation cannot be corrected in thirty (30) days, submit a plan satisfactory to the City to correct the violation. If an alleged violation is proven to exist, following a duly noticed public hearing, and no cure or action on a plan acceptable to the City has been received by the City within thirty (30) days, such liquidated damages shall be tendered by Franchisee within thirty (30) days or, if not tendered within 30 days, shall be chargeable to the Letter of Credit as set forth in the Ordinance. Franchisee may petition the City Council for relief with just cause. The imposition of liquidated damages shall not preclude the City from exercising the other enforcement provisions of the Ordinance, including revocation, or other statutory or judicially imposed penalties. Liquidated damages may be imposed as follows:

(a) For failure to complete construction or extend service in accordance with Franchise: \$100/day for each day the violation continues.

(b) For failure to comply with requirements for public, educational and government access: \$100/day for each day the violation continues.

(c) For failure to submit reports, maintain records, provide documents or information: \$100/day for each day the violation continues.

(d) For violation of customer service standards required by this Franchise Agreement, the Ordinance, or by FCC regulation: \$100/day per standard violated.

(e) For violation of the books and financial records provisions of this Franchise and the Ordinance: up to \$100/day for each day the violation continues.

(f) For violation of other material provisions of this Franchise Agreement or the Ordinance: up to \$100/day for each day the violation continues.

The Franchising Process

Cable operators in North Liberty agree to abide by the terms of their franchise agreement as well as our Cable Television Franchise Enabling Ordinance (“Cable Ordinance”). This ordinance lays out the process for franchise application and granting. There is a one-time non-

⁶ Mediacom Franchise Section VIII(A), as amended.

⁷ Mediacom Franchise Section XX(B), as amended; and Franchise Agreement between The City of North Liberty, Iowa and South Slope Cooperative Telephone Company [“South Slope Franchise”] Section 15.2.

refundable franchise filing fee of \$1,000. The applicant must also pay “the actual printing cost and publication cost incurred in granting the Franchise not to exceed \$5,000.00.”⁸ State law requires that an election be held on the question of granting cable franchises in Iowa.

North Liberty’s Cable Ordinance provides that the franchise grantor (the City of North Liberty) may establish requirements for cable franchises, along with the Federal statutory obligation to determine the community’s cable-related needs and interests and to ensure that these are addressed in the franchising process. Franchise agreements should be negotiated in good faith and mutually agreed-upon, with the balance of power being unequal only in the expertise and resources of either party’s legal counsel. As there are many more small LFAs than there are cable service providers, the legal clout often rests with the incoming cable “giant”. The local franchising process is one of the few safeguards that local governments can call upon to help protect their citizens and ensure their cable-related needs are being met. While a franchise agreement is the forum in which a local government can delineate requirements of the cable operator, the individualized agreements also provide protections for each service provider, beyond what the Federal law provides.

Most notably, local franchises grant video service providers the necessary access to public streets and rights-of-way to operate and maintain their cable system. Additionally, our franchise agreements with South Slope and Mediacom give each provider the right to petition the City to change the terms of their agreement if a new entrant receives a franchise that the existing operator finds to be more favorable than their own.⁹

South Slope’s franchise anticipates the possibility of a changing telecommunications regulatory environment. It includes a Federal Preemption clause, which protects South Slope’s interest if the laws governing their service change. It reads in part: “Any condition or provision of this Franchise or the Ordinance which is inconsistent with State or Federal law shall be deemed to be preempted and superseded. If the Federal Communications Commission (FCC) finally determines that the service offered by Franchisee is not Cable Service or that the System is not a Cable System, the Franchise shall immediately terminate and be of no further force and effect.”¹⁰

Competition in North Liberty

South Slope entered our market as a cable TV provider in 2004. Our Telecommunications Commission, which provides franchise oversight, first considered a draft franchise agreement with South Slope in January 2004. The agreement was negotiated at a special Telecommunications Commission meeting on January 26, and approved by resolution by the North Liberty City Council on February 24, 2004. The City Council then expedited approval of the Ordinance granting the franchise, holding only two readings instead of three. A special election was held on May 11, 2004, the ballot question being whether or not South Slope should be awarded a cable TV franchise in North Liberty. This referendum passed by a vote of 189 in favor and one against. South Slope was then free to offer service, and at the time of the election South Slope already had infrastructure in place to serve all of North Liberty (they are the local telephone provider). However, due to reported problems with their vendors, deployment was delayed until December 2004.

⁸ North Liberty Ordinance No. 98-1 “Cable Television Franchise Enabling Ordinance”, Section 8(c).

⁹ South Slope Franchise Section 2.6, Mediacom Franchise Section V.

¹⁰ South Slope Franchise Section 2.3.

If approached today by a potential new applicant for a cable franchise, North Liberty has the staff and resources to ensure a speedy franchise negotiation and approval process. Our Telecommunications Commission is well-versed in basic issues regarding franchise oversight and the limitations of local regulatory authority. We are also prepared to facilitate delivery of our local access channel to a new provider's system, as we did with South Slope.

South Slope offers the "triple play" of voice, video and data services to North Liberty subscribers, and Mediacom is currently negotiating an interconnection agreement with South Slope so they can offer voice services as well. All services are available to all residents of our community. Consumers in North Liberty have more choice in these advanced services than do some residents of adjacent, larger cities. The cable franchising process here has evidently provided no barrier to these operators providing a variety of top-notch telecommunications services.

Conclusions

The local cable franchising process serves consumers and video providers well in North Liberty. We are experienced at working with cable providers and potential providers in negotiating franchise terms that meet the needs of the local community while taking the practical business needs of cable providers into account.

The current cable franchising regime ensures that operators are allowed access to the rights-of-way in a fair and evenhanded manner, that they and other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in accordance with local requirements.

Individualized franchise agreements allow the local government to appropriately oversee the operations of cable service providers in the public interest, using locally-relevant measures and collecting local consumer feedback.

Finally, local franchises allow each community to have a voice in what features of the cable system (such as PEG access or local emergency alerts) will be available to meet local needs. These factors should be equally applicable for new entrants as for existing operators.

The City of North Liberty therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants into the video services field. We sincerely hope these comments are helpful in the Commission's decision-making process and that the special protections outlined above that benefit consumers, our local government and our cable operators are preserved in however the Commission decides to implement Section 621(a)(1).

Respectfully submitted,

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